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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978
NO. 78-191

GEORGE E. FASSNACHT,
PETITIONER

V.

PENNSYLVANIA,
RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF PENNSYLVANIA

JANE CUTLER GREENSPAN
ASSISTANT DISTRICT ATTORNEY

STEVEN H. GOLDBLATT
DEPUTY DISTRICT ATTORNEY FOR LAW

EDWARD G. RENDELL
DISTRICT ATTORNEY OF
PHILADELPHIA COUNTY

2400 CENTRE SQUARE WEST
PHILADELPHIA, PENNSYLVANIA 19102

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COUNTER-STATEMENT OF THE ISSUES PRESENTED

1. Is petitioner's fourth amendment claim cognizable for review by this Court where petitioner failed to present this claim in the State Court forfeiture proceeding or on appeal to the State Appellate Courts and it is raised for the first time in the instant petition for writ of certiorari.

2. Assuming arguendo that petitioner's fourth amendment claim is cognizable, should the fourth amendment exclusionary rule apply to the forfeiture proceeding in the instant case.

3. Was petitioner denied due process of law where there was ample evidence to justify the State Court's refusal to return firearms and ammunition seized from the basement of petitioner's home.

4. Did the Commonwealth adequately demonstrate by a preponderance of the evidence that petitioner was an unlicensed dealer under 18 U.S.C. §921 et seq., 18 U.S.C.A. §921 et seq. (1976).

COUNTER-STATEMENT OF THE CASE

On June 20, 1971, pursuant to a search warrant, officers of the Philadelphia Police Department conducted a search of the home of Miss Marie Tobin, 5414 Large Street, Philadelphia, Pennsylvania. There they seized two boxes containing various weapons which, according to Miss Tobin, belonged to petitioner, George Fassnacht. Miss Tobin also told the officers that petitioner's wife and two friends had removed several boxes the preceding night after Miss Tobin had told petitioner's wife to remove all explosives

FROM HER HOME. ACTING UPON THIS INFORMATION, THE POLICE OFFICERS WENT TO PETITIONER'S HOME AT 528 RHAWN STREET IN PHILADELPHIA WHERE THEY SEIZED FROM THE BASEMENT THE FOLLOWING ARSENAL OF WEAPONRY: AUTOMATIC PISTOLS; MACHINE GUNS; PISTOLS WITH SHOULDER STOCKS; A PISTOL SILENCER; PISTOLS; DESTRUCTIVE DEVICES OR EXPLOSIVES INCLUDING PLASTIC EXPLOSIVES, ELECTRIC SQUIBS, GUNPOWDER, T.NT, HAND GRENADE FUSES, A CHINESE COMMUNIST PROPELLING CHARGE AND A GRENADE SIMULATOR; RIFLES; KNIVES, SWORDS AND A MACHETE; OVER 370,000 ROUNDS OF AMMUNITION; WEAPONS PARTS FOR AUTOMATIC AND NON-AUTOMATIC WEAPONS; AMMUNITION MAGAZINES AND AMMUNITION CLIPS FOR AUTOMATIC AND NON-AUTOMATIC WEAPONS; ITEMS WHICH THE COMMONWEALTH AGREED TO RETURN. SEE INVENTORY ATTACHED HERETO AS APPENDIX "A". THESE ITEMS WHEN DISCOVERED BY POLICE, WERE STORED IN BOXES AND WERE KEPT CLEAN AND OILED. (N.T. 33).[1]

FOUR DAYS AFTER THE DISCOVERY OF THIS ARSENAL, PETITIONER

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1 WHILE DEFENDANT CLAIMS THAT THESE ITEMS WERE PACKED IN GOVERNMENT SUPPLIED BOXES AT GOVERNMENT EXPENSE IN PREPARATION FOR GOVERNMENT ASSIGNMENT OUTSIDE THE UNITED STATES, SEE PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA (HEREINAFTER PETITION) AT 7, THIS ALLEGED FACT IS NOT OF RECORD IN THIS CASE NOR HAS IT BEEN NOTED IN ANY PRIOR BRIEF FILED WITH THE STATE COURTS IN THIS CASE.

WAS ARRESTED AND CHARGED WITH A VARIETY OF WEAPONS OFFENSES. PRIOR TO TRIAL PETITIONER SUCCESSFULLY MOVED TO SUPPRESS ALL WEAPONS SEIZED FROM HIS BASEMENT ON RHAWN STREET AND THE BOXES SEIZED FROM THE LARGE STREET ADDRESS. THE COMMONWEALTH APPEALED THE SUPPRESSION ORDER TO THE COURT OF COMMON PLEAS WHICH AFFIRMED THE SUPPRESSION OF THE ITEMS SEIZED FROM PETITIONER'S BASEMENT BUT REVERSED THE SUPPRESSION ORDER WITH RESPECT TO THE ITEMS SEIZED FROM MS. TOBIN'S BASEMENT ON LARGE STREET. CONSEQUENTLY, PETITIONER'S DEMURRER TO THE CHARGES RELATING TO THE ITEMS IN HIS BASEMENT WAS SUSTAINED. PETITIONER WAS FOUND NOT GUILTY OF THE CHARGES RELATING TO THE ITEMS SEIZED FROM THE LARGE STREET ADDRESS.

ON APRIL 19, 1974, PETITIONER FILED A PETITION IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY SEEKING RETURN OF ALL PROPERTY TAKEN FROM THE BASEMENT OF 528 RHAWN STREET. A HEARING WAS HELD ON JULY 16, 1974, BEFORE THE HONORABLE NED L. HIRSH. THERE THE COMMONWEALTH AND PETITIONER STIPULATED TO THE FOLLOWING EVIDENCE:

FRANK MOYER, FIREARMS SPECIALIST OF THE UNITED STATES DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, WOULD HAVE TESTIFIED THAT ON JUNE 20, 1971, HE WAS PRESENT IN THE BASEMENT OF PETITIONER'S RESIDENCE AT 528 RHAWN STREET WHERE HE OBSERVED LARGE QUANTITIES OF EXPLOSIVES AND AMMUNITION NEAR THE BASEMENT FURNACE, AND LOOSE BLACK POWDER ON THE FLOOR WHICH COULD HAVE BEEN IGNITED

BY FRICTION CAUSED BY THE MERE SCUFFING OF FEET ON THE FLOOR'S CONCRETE SURFACE (N.T. 30). MR. MOYER WOULD HAVE STATED THAT IN HIS OPINION THE CONDITION IN WHICH HE FOUND PETITIONER'S BASEMENT WAS EXTREMELY UNSAFE AND THAT IF A FIRE HAD STARTED THEREIN AN EXPLOSION OF SUCH INTENSITY WOULD HAVE OCCURRED THAT IT WOULD HAVE DESTROYED NOT ONLY PETITIONER'S HOME BUT ALSO A PORTION OF THE COMMUNITY (N.T. 30, 31).

MR. MOYER WOULD HAVE ALSO STATED THAT THE QUANTITY AND QUALITY OF THE AMMUNITION FOUND IN PETITIONER'S BASEMENT INDICATED THAT PETITIONER WAS NOT A COLLECTOR OF WEAPONS, AS HE CLAIMS IN THE INSTANT APPEAL, BUT RATHER A FIREARMS DEALER (N.T. 32). MR. MOYER WOULD HAVE TESTIFIED THAT IN HIS EXPERIENCE COLLECTORS DO NOT GENERALLY KEEP MORE THAN ONE THOUSAND ROUNDS OF ANY ONE TYPE OF AMMUNITION ON HAND AND THAT WHEN SUCH A QUANTITY OF AMMUNITION IS KEPT IT IS KEPT FOR A WEAPON THAT IS FIRED OFTEN AND NOT JUST EXHIBITED IN A GUN COLLECTION (N.T. 32). THE PHILADELPHIA POLICE RECOVERED FROM PETITIONER'S BASEMENT OVER THIRTY-FIVE DIFFERENT TYPES OF AMMUNITION IN QUANTITIES OF OVER ONE THOUSAND ROUNDS, FIVE DIFFERENT TYPES IN QUANTITIES OVER TEN THOUSAND ROUNDS, AND ONE TYPE IN A QUANTITY IN EXCESS OF NINETY-FIVE THOUSAND ROUNDS. MOREOVER, MR. MOYER WOULD HAVE TESTIFIED THAT THE MANNER IN WHICH THE WEAPONS WERE STORED IN THE BASEMENT WAS NOT THE MANNER IN WHICH A COLLECTOR WOULD DISPLAY HIS COLLECTION (N.T. 33).

A Mr. Theamides, attorney for the Bureau of Alcohol, Tobacco and Firearms, would have testified that the aforementioned items were not registered at the time of their seizure as required by the National Firearms Act (N.T. 34, 35). 26 U.S.C. §5841 et seq., 26 U.S.C.A. §5841 et seq. (1968). Furthermore, Rosemary Carr of the United States Department of the Treasury, Department of Licenses and Inspections, would have stated that petitioner was not, at the time of the hearing nor at the time of the seizure, licensed by the federal government as a dealer in firearms or ammunition or as a collector thereof (N.T. 12). Sylvia Lewis of the Philadelphia Police Department, employed in the Philadelphia Department of Licenses and Inspections, would have testified that petitioner was not licensed to store ammunition and explosives and was not registered as a collector of those items either on the date of the seizure or on the date of the hearing (N.T. 13, 14).

Finally, Detective Eddie Reagen of the Philadelphia Police Department would have testified that he determined from interviews with petitioner's family that petitioner had been absent from the country for two and one-half years prior to the seizure on June 20, 1971, yet during petitioner's absence

BOXES WERE DELIVERED TO PETITIONER'S HOME AND PLACED IN THE BASEMENT (N.T. 15).

PETITIONER OFFERED THE STATEMENT OF HOWARD MONTGOMERY, A BALLISTICS SPECIALIST FOR THE PHILADELPHIA POLICE DEPARTMENT, WHO WOULD HAVE TESTIFIED THAT DEALERSHIP CANNOT BE PRESUMED FROM THE QUANTITY OF WEAPONS STORED IN PETITIONER'S HOME AND THAT SUCH QUANTITY WAS CONSISTENT WITH PETITIONER'S ASSERTION THAT HE WAS A PRIVATE COLLECTOR (N.T. 48). ADDITIONALLY, PETITIONER WOULD HAVE TESTIFIED THAT HE IS A BALLISTICS EXPERT. THOUGH HE HAD NOT BEEN EMPLOYED IN THAT CAPACITY SINCE JUNE, 1971, HE STILL OFFERED HIS SERVICES AS AN EXPERT AND THE WEAPONS HE HAD IN HIS BASEMENT WERE ESSENTIAL TO HIS WORK AS AN EXPERT (N.T. 46). PETITIONER ALSO WOULD HAVE STATED THAT HE WAS A WEAPONS COLLECTOR AND NEVER ENGAGED IN EITHER WHOLESALE OR RETAIL TRANSACTIONS WITH RESPECT TO THE WEAPONS, EXPLOSIVES, AND AMMUNITION FOUND IN HIS BASEMENT (N.T. 46).

ON JANUARY 6, 1975, JUDGE HIRSH DENIED THE PETITION FOR RETURN OF PROPERTY AND ORDERED THE PROPERTY DESTROYED. ON APPEAL TO THE SUPERIOR COURT OF PENNSYLVANIA, THE ORDER OF THE LOWER COURT WAS AFFIRMED EXCEPT WITH RESPECT TO THE SWORDS, KNIVES AND MACHETE FOR WHICH THE CASE WAS REMANDED FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW. COMMONWEALTH V. FASSNACHT, 246 PA. 42 , 369 A.2D 800 (1977). PETITIONER SOUGHT ALLOWANCE OF APPEAL TO THE SUPREME COURT OF PENNSYLVANIA WHICH DENIED HIS PETITION ON AUGUST 5, 1977. PETITIONER SOUGHT A RECONSIDERATION

OF THAT ORDER WHICH WAS ALSO DENIED. THE INSTANT PETITION FOR A WRIT OF CERTIORARI, REQUESTING RETURN OF ONLY THE PISTOLS, RIFLES AND AMMUNITION, ENSUED.

REASONS FOR DENYING THE WRIT

1. PETITIONER'S FAILURE TO RAISE HIS FOURTH AMENDMENT CLAIM IN THE STATE COURT FORFEITURE PROCEEDING OR IN THE APPEAL THEREFROM PRECLUDES REVIEW OF IT BY THIS COURT.

PETITIONER CLAIMS THAT EVIDENCE OF HIS WEAPONS CACHE, WHICH HAD BEEN SUPPRESSED AT HIS CRIMINAL TRIAL, SHOULD NOT HAVE BEEN USED IN THE HEARING ON HIS APPLICATION FOR RETURN OF PROPERTY. PETITIONER CLAIMS THAT THE COMMONWEALTH'S USE OF THIS SUPPRESSED EVIDENCE VIOLATED HIS FOURTH AMENDMENT RIGHTS UNDER ONE 1958 PLYMOUTH SEDAN V. PENNSYLVANIA, 380 U.S. 693, 85 S. CT. 1246 (1965). HOWEVER, AT THE RETURN OF PROPERTY HEARING, PETITIONER FAILED TO OBJECT TO THE INTRODUCTION OF THIS EVIDENCE ON FOURTH AMENDMENT GROUNDS OR TO RAISE AND ARGUE THE FOURTH AMENDMENT CLAIM IN THE PENNSYLVANIA APPELLATE COURTS. SEE BRIEF FOR APPELLANT IN THE SUPERIOR COURT, NO. 705, OCTOBER TERM, 1975; SEE ALSO COMMONWEALTH V. FASSNACHT, PETITION FOR ALLOWANCE OF APPEAL, ALLOCATUR DOCKET NO. 2962, FILED 5/18/77, DENIED 8/5/77; AND COMMONWALTH V. FASSNACHT, PETITION FOR RECONSIDERATION OF DENIAL OF PETITION FOR ALLOWANCE OF

APPEAL, FILED 8/22/77, DENIED 4/4/67.[2] WHILE OBJECTIONS ON GROUNDS OF RELEVANCY (N.T. 11, 14, 40-41) AND MATERIALITY (N.T. 14, 20) WERE MADE, NO OBJECTION WAS MADE ON PETITIONER'S NOW ASSERTED CONSTITUTIONAL GROUND. IT IS WELL SETTLED THAT "AN OBJECTION TO EVIDENCE PREDICATED UPON A SPECIFIC CONSTITUTIONAL CLAIM IS NOT PROPERLY PRESENTED FOR REVIEW IF THE ONLY OBJECTION MADE IN THE TRIAL COURT WAS BASED ON OTHER GROUNDS. UNITED STATES V. MILLER, 316 F.2D 81, 84 (6TH CIR. 1963), CERT. DENIED, 375 U.S. 935, 84 S. CT. 335 (1963).

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2 PETITIONER SUGGESTS THAT PROPERTY IS FORFEITABLE ONLY IF IT IS CONTRABAND PER SE, I.E., THE MERE POSSESSION OF IT IS CRIMINAL. THIS IS INCORRECT. ITEMS WHICH ARE USED FOR ILLEGAL PURPOSES, E.G. THE GUN IN A ROBBERY, THE CAR WHICH TRANSPORTS ILLEGAL LIQUOR, GAMBLING MONEY, ARE ALSO FORFEITABLE AS CONTRABAND. THE DIFFERENCE, OF COURSE, IS THAT POSSESSION OF THE LATTER TYPE OF CONTRABAND MUST BE SHOWN TO BE IN VIOLATION OF PUBLIC POLICY BECAUSE OF THE USE TO WHICH IT IS PUT. ONCE THIS IS SHOWN BY A PREPONDERANCE OF THE EVIDENCE. ONE 1961 LINCOLN CONTINENTAL SEDAN V. UNITED STATES, 360 F.2D 467, 469 (8TH CIR. 1966), THE ITEM IS FORFEITED. WHILE THE ADMISSION OF EVIDENCE TO PROVE ILLEGAL USE MAY BE OBJECTED TO ON THE GROUNDS THAT IT WAS ILLEGALLY SEIZED, NO SUCH OBJECTION WAS MADE HERE AND THUS THE USE OF THE EVIDENCE IN THE PROCEEDING BELOW WAS PROPER. MOREOVER, IT IS WELL SETTLED THAT THE MERE FACT OF AN ILLEGAL SEIZURE, STANDING ALONE, DOES NOT IMMUNIZE GOODS, BE THEY PER SE OR DERIVATIVE CONTRABAND, FROM FORFEITURE, UNITED STATES V. ONE 1971 HARLEY DAVIDSON MOTORCYCLE, 508 F.2D 351 (9TH CIR. 1974) QUOTING JOHN BACALL IMPORTS, LTD. V. UNITED STATES, 412 F.2D 586, 588 (9TH CIR. 1969).

Moreover, this Court has indicated that it will not "decide issues raised for the first time here." Tacon v. Arizona, 410 U.S. 351, 352, 93 S. Ct. 998, 999 (1973); Monks v. New Jersey, 398 U.S. 71, 90 S. Ct. 1563 (1970); Street v. New York, 394 U.S. 576, 581-85, 89 S. Ct. 1354 (1969); Pickering v. Board of Education, 391 U.S. 563, 578 n.2, 88 S. Ct. 1731, 1740 n.2 (1968). In Tacon v. Arizona, supra, petitioner sought review of his claim regarding the constitutional limits on the State's authority to try a person in absentia. Because this issue was not raised in the state courts, and was raised for the first time in the Petition for writ of certiorari, this Court refused to consider the issue. See also Cardinale v. Louisiana, 394 U.S. 437, 89 S. Ct. 1161 (1969). The noncognizable nature of the issue is even more prevalent in the instant case where the claim sought to be reviewed is the suppression of evidence on fourth amendment grounds. For by both federal and state rule, suppression motions on constitutional grounds must be made prior to trial and failure to do so constitutes a waiver. Fed. R. Crim. P. 12(f); Pa. R. Crim. P. 323(b); Jones v. United States, 362 U.S. 257, 80 S. Ct. 725 (1960); United States v. Ellis, 461 F.2d 962, 969 (2d Cir. 1972) cert denied, 409 U.S. 866, 93 S. Ct. 152 (1972); United States v. Lyon, 397 F.2d 505, 508 (7th Cir. 1968) cert. denied sub. nom. Lysczyk v. United States, 393 U.S. 846, 89 S. Ct. 131 (1968). Certainly if a federal litigant is precluded from raising this issue in this Court by failure to raise it in the trial court, a state litigant should not be entitled to more. See Francis v. Henderson, 425 U.S. 536, 544, 96 S. Ct. 1708, 1711, (1976).

Moreover, where as here the nature of the proceeding is civil (in rem) rather than criminal, and, thus, the issue and the remedy involve money or fungible goods rather than liberty, there is simply no reason to permit a litigant, after four years of litigation through all state court levels with extensive time and money expended by the opposing side, suddenly to raise a new issue on petition for certiorari to this Court. To do so would make all prior litigation for nought and would unjustly punish the opposing side which would have needlessly expended much time and money only to have the issue changed at the last moment. Obviously the initial decision to litigate and to bear the cost of litigation is based on the issue which the opposing side raises. Whatever justification there may be for allowing such piecemeal litigation to exist where liberty is at stake simply does not exist, where, as here, personal property rights are at issue.

Finally it should be noted that had this issue been raised for the first time in the Pennsylvania Appellate Courts, it undoubtedly would not have been considered by reason of the failure to raise it in the trial court. Dilliplaine v. Lehigh Valley Trust Co., 457 Pa. 255, 322 A.2d 114 (1974). This rule of state court procedure, requiring that an issue must be raised in the

TRIAL COURT IN ORDER TO BE COGNIZABLE ON APPELLATE REVIEW, CONSTITUTES AN ADEQUATE STATE GROUND TO PRECLUDE REVIEW OF THE ISSUE HERE. SEE WAINWRIGHT V. SYKES, 433 U.S. 72, 97 S. CT. 2497 (1977); SEE ALSO CARDINALE V. LOUISIANA, SUPRA, AT 439, 89 S. CT. 1163.

FINALLY, THE APPLICATION OF THE WAIVER DOCTRINE IS PARTICULARLY SOUND IN THE INSTANT CASE IN VIEW OF PETITIONER'S CIVIL REMEDIES INCLUDING STATE AND FEDERAL CIVIL ACTIONS AGAINST THOSE WHO PERFORMED THE ILLEGAL SEIZURE[3] AS WELL AS MALPRACTICE ACTIONS AGAINST THE ATTORNEYS WHO FAILED TO RAISE THE FOURTH AMENDMENT ISSUE IN THE STATE COURTS. SEE HILL V. CALIFORNIA, 401 U.S. 802, 805, 91 S. CT. 1106, 1111 (1971).

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[3] INDEED PETITIONER HAS INSTITUTED BOTH STATE AND FEDERAL PROCEEDINGS AND ALTHOUGH HIS FEDERAL SUIT WAS DISMISSED UNDER THE STATUTE OF LIMITATIONS, HIS STATE ACTION IS STILL PENDING.

EVEN IF THIS COURT WERE TO REACH THE MERITS OF PETITIONER'S FOURTH AMENDMENT CLAIM, THE COMMONWEALTH SUBMITS THAT THE EXCLUSIONARY RULE SHOULD NOT APPLY SO AS TO PRECLUDE THE INTRODUCTION OF EVIDENCE OF PETITIONER'S WEAPON ARSENAL TO PROVE UNLICENSED DEALERSHIP IN THE FORFEITURE PROCEEDING IN THIS CASE.[4] THE PURPOSE BEHIND THE EXCLUSIONARY

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[4] WHILE THE FOURTH AMENDMENT HAS BEEN HELD TO APPLY IN THE FORFEITURE AREA, SEE ONE 1958 PLYMOUTH SEDAN V. PENNSYLVANIA, SUPRA, THE HISTORICAL UNDERPINNINGS OF THIS DECISION REST ON BOYD V. UNITED STATES, 116 U.S. 616, 6 S. CT. 524 (1886) WHICH APPLIED THE FOURTH AMENDMENT ONLY AS TO PERSONAL PAPERS, SEE ALSO SILVERTHORNE LUMBER CO. V. UNITED STATES, 251 U.S. 385, 40 S. CT. 182 (1920), AND SPECIFICALLY EXCLUDED PER SE AND DERIVATIVE CONTRABAND:

> IT IS CLEAR THAT THE MEMBERS OF THAT BODY [THE CONGRESS WHICH ADOPTED THE CONSTITUTION AND ITS AMENDMENTS] DID NOT REGARD SEARCHES AND SEIZURES OF THIS KIND [TO REGULATE COLLECTION OF DUTIES] AS "UNREASONABLE", AND THEY ARE NOT EMBRACED WITHIN THE PROHIBITION OF THE [FOURTH] AMENDMENT. SO, ALSO, THE SUPERVISION AUTHORIZED TO BE EXERCISED BY OFFICERS OF THE REVENUE OVER THE MANUFACTURE OR CUSTODY OF EXCISABLE ARTICLES ... ARE NECESSARILY EXCEPTED OUT OF THE CATEGORY OF UNREASONABLE SEARCHES AND SEIZURES. SO ALSO, THE LAWS WHICH PROVIDE FOR SEARCH AND SEIZURE OF ARTICLES AND THINGS WHICH IT IS UNLAWFUL FOR A PERSON TO HAVE IN HIS POSSESSION FOR THE PURPOSE OF ISSUE OR DISPOSITION SUCH AS COUNTERFEIT COIN, LOTTERY TICKETS, IMPLEMENTS OF GAMBLING, ETC., ARE NOT WITHIN THIS CATEGORY... MANY OTHER THINGS OF THIS CHARACTER MIGHT BE ENUMERATED.

BOYD V. UNITED STATES, SUPRA AT 623-24, 116 U.S. AT 528-29.

RULE IS TO DETER FUTURE ILLEGAL POLICE CONDUCT.[5] UNITED STATES v. CALANDRA, 414 U.S. 338, 347, 94 S. Ct. 613, 619 (1974). RECENTLY, SEVERE LIMITATIONS HAVE BEEN PLACED ON THE USE OF THE EXCLUSIONARY RULE. SEE STONE v. POWELL, 428 U.S. 465, 97 S. Ct. 3037 (1976); UNITED STATES v. JANIS, 428 U.S. 433, 96 S. Ct. 3021 (1976); UNITED STATES v. PELTIER, 422 U.S. 531, 95 S. Ct. 2313 (1975); MICHIGAN v. TUCKER, 417 U.S. 433, 447-48, 94 S. Ct. 2357 (1974); HARRIS v. NEW YORK, 401 U.S. 222, 91 S. Ct. 643 (1971); ALDERMAN v. UNITED STATES, 394 U.S. 165, 89 S. Ct. 961 (1969); WALDER v. UNITED STATES, 347 U.S. 62, 74 S. Ct. 354 (1954); UNITED STATES v. SHIPANI, 435 F.2D 26 (2D CIR. 1970) CERT. DENIED, 401 U.S. 983, 91 S. Ct. 1198 (1971). IN STONE v. POWELL, SUPRA, THIS COURT DISALLOWED IMPLEMENTATION OF THE EXCLUSIONARY RULE BY WAY OF COLLATERAL REVIEW IN FEDERAL HABEAS CORPUS EVEN WHERE THE STATE COURT HAS WRONGLY DECIDED THE FOURTH AMENDMENT ISSUE UNLESS THE PRISONER HAD BEEN DENIED A FAIR REVIEW OF THE FOURTH AMENDMENT CLAIM BY THE STATE COURT. WITH REGARD TO THE EXCLUSIONARY RULE THE COURT QUOTED:

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5 ALTHOUGH "JUDICIAL INTEGRITY" HAS BEEN CONSIDERED AS A PURPOSE BEHIND THE EXCLUSION OF ILLEGALLY OBTAINED EVIDENCE, SEE UNITED STATES v. PELTIER, 422 U.S. 531, 536-39, 95 S. Ct. 2313, 2317-18 (1975), THIS COURT NO LONGER REGARDS THAT RATIONALE AS A JUSTIFICATION FOR THE EXCLUSIONARY RULE. SEE STONE v. POWELL, 428 U.S. 465 AT 485-86, 96 S. Ct. 3037 AT 3047-48. SEE ALSO, UNITED STATES v. VANDEMARK, 522 F.2D 1019, 1022 (9TH CIR. 1975); PEOPLE v. BELLECI, 81 CAL. APP. 3D 392, 146 CAL. REPTR. 462 (1978).

As Professor Amsterdam has observed:

> "The Rule is unsupportable as reparation or compensatory dispensation to the injured criminal; its sole rational justification is the experience of its indispensibility in exert(ing) general legal pressures to secure obedience to the Fourth Amendment on the part of ... law-enforcing officers. As it serves this function, the rule is a needed, but grud[g]ingly taken, medicament; no more should be swallowed than is needed to combat the disease. Granted that so many criminals must go free as will deter the constables from blundering, pursuance of this policy of liberation beyond the confines of necessity inflicts gratuitous harm on the public interest ...." Search, Seizure and Section 2255: A Comment, 112 U.Pa.L.Rev. 378, 388-389 (1964) (footnotes omitted).

Stone v. Powell, supra at 437 n. 24, 96 S. Ct. at 3049 n. 24.

The application of the exclusionary rule is now determined by balancing the purpose of the "cost to society of losing perfectly competent evidence against the prospect of incrementally enhancing fourth amendment values". United States v. Ceccolini, ___ U.S. ___, 98 S. Ct. 1054, 1064 (1978) (Concurring Op., Burger, C.J.); See also United States v. Calandra, supra at 348-51, 94 S. Ct. at 620-21; People v. Belleci, supra.

THE INSTANT CASE PRESENTS THESE COMPETING INTERESTS. WHILE GENERALLY A CIVIL, IN REM PROCEEDING, THE FORFEITURE HERE COMMENCED AS A MOTION FOR RETURN OF PROPERTY UNDER PENNSYLVANIA RULE OF CRIMINAL PROCEDURE 324. THE RETURN OF PROPERTY MOTION, LIKE FED. R. CRIM. P. 41(E), MAY BE EMPLOYED PRIOR TO OR AFTER A CRIMINAL TRIAL. IN EITHER CASE, IF THE EVIDENCE WAS ILLEGALLY SEIZED, THE POLICE ARE PENALIZED BY SUPPRESSION OF THE EVIDENCE AT THE CRIMINAL TRIAL AND THE PROBABLE CONCOMITANT, LOSS OF THE CASE. ACCORDINGLY, THE PURPOSE OF THE EXCLUSIONARY RULE IS FULLY SATISFIED BY ITS APPLICATION IN THE CRIMINAL PROCEEDINGS. TO THEN APPLY THE RULE AGAIN, IN THE RETURN OF PROPERTY PROCEEDING, SERVES NO ADDITIONAL PURPOSE AT ALL. INDEED, TO EMPLOY THE EXCLUSIONARY RULE AT THE FORFEITURE PROCEEDING AND THEREBY PERMIT THE RETURN OF THE PROPERTY AND POTENTIAL CONTINUATION OF ITS CRIMINAL USE WOULD IMPOSE AN ENORMOUS COST ON SOCIETY WHICH IS WHOLLY OUT OF PROPORTION TO ANY POSSIBLE NEED TO VINDICATE THE FOURTH AMENDMENT RULE. WHERE, AS HERE, EXCLUSION OF EVIDENCE DEMONSTRATING ILLEGAL USE WOULD PERMIT THE PROPERTY TO BE RETURNED TO THE ILLEGAL USER FOR CONTINUED ILLEGAL USE, THE PUBLIC POLICY MUST CLEARLY DICTATE THAT THE EVIDENCE IS NOT TO BE EXCLUDED. THE RISK TO THE GENERAL WELFARE IS TOO GREAT - CONTINUATION OF THE CRIME. ACCORDINGLY, WHILE A COURT MAY, INDEED MUST, IN A CRIMINAL PROSECUTION, SUPPRESS EVIDENCE AND THUS PRECLUDE IMPOSITION OF

A CRIMINAL SANCTION UPON AN INDIVIDUAL DESPITE GREAT RISK TO THE GENERAL PUBLIC, NO ADDITIONAL PENALTY SHOULD OR NEED BE EXACTED TO VINDICATE AN INDIVIDUAL'S FOURTH AMENDMENT RIGHTS. APPLICATION OF THE EXCLUSIONARY RULE TO FORFEITURE PROCEEDINGS IS SIMPLY JUDICIAL OVERKILL.

IF IT IS NEVERTHELESS DETERMINED THAT THE EXCLUSIONARY RULE IS NECESSARY IN THE FORFEITURE AREA BECAUSE EXCLUSION OF ILLEGALLY OBTAINED EVIDENCE IN THE CRIMINAL TRIAL IS INSUFFICIENT TO DETER ILLEGAL POLICE CONDUCT AND PROTECT FOURTH AMENDMENT VALUES, THEN ITS APPLICATION IN THE FORFEITURE AREA SHOULD BE LIMITED TO CASES INVOLVING BAD FAITH ON THE PART OF THE POLICE. WHILE RETENTION OF A PER SE EXCLUSION IN CRIMINAL TRIALS MAY BE JUSTIFIED, EXTENSION OF SUCH A BLANKET EXCLUSIONARY RULE IN THE FORFEITURE AREA SERVES NO PURPOSE, ESPECIALLY WHERE, AS HERE, THE POLICE HAVE ALREADY SUFFERED LOSS OF THE CRIMINAL CASE, AND THE FOURTH AMENDMENT VIOLATION IS NOT A LACK OF PROBABLE CAUSE, BUT RATHER A MORE TECHNICAL ERROR REGARDING THE WARRANT REQUIREMENT.[6]

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[6] HERE, BASED UPON INFORMATION FROM AN EXTERMINATOR, THE POLICE SECURED A WARRANT FOR MS. TOBIN'S BASEMENT ON LARGE STREET. THERE THE POLICE RECEIVED INFORMATION FROM MS. TOBIN REGARDING EXPLOSIVES WHICH HAD BEEN TRANSFERRED BACK TO PETITIONER'S HOME ON RHAWN STREET. BELIEVING THAT AN EMERGENCY EXISTED IN VIEW OF THE EXPLOSIVES, THE POLICE WENT DIRECTLY TO RHAWN STREET TO SEIZE THESE DANGEROUS ITEMS. DESPITE EVIDENCE THAT A LARGE EXPLOSION COULD EASILY OCCUR (N.T. 30-32) THE POLICE NEVERTHELESS DELAYED BEFORE REMOVING THE ITEMS FROM THE PETITIONER'S BASEMENT. THE ONLY FOURTH AMENDMENT QUESTION PRESENTED BY THAT SEIZURE WAS WHETHER SUFFICIENT EVIDENCE OF AN EMERGENCY EXISTED TO OBVIATE THE WARRANT REQUIREMENT IN VIEW OF THE POLICE DELAY IN EFFECTUATING THE SEIZURE. THERE WAS NEVER SERIOUS DOUBT AS TO THE EXISTENCE OF PROBABLE CAUSE.

SINCE REASONABLENESS IS, AND SHOULD BE, THE TEST OF POLICE CONDUCT UNDER THE FOURTH AMENDMENT, SEE PENNSYLVANIA V. MIMMS, 434 U.S. 106, 98 S. CT. 330 (1977), INTERJECTION OF A GOOD FAITH REQUIREMENT WITH THE EXCLUSIONARY RULE, IF THE EXCLUSIONARY RULE IS NEEDED AT ALL, IS NOT ONLY JUSTIFIED, BUT PROPER. THIS IS ESPECIALLY TRUE AT THIS JUNCTURE, WHEN FEW LAWYERS, MUCH LESS POLICE OFFICERS, CAN TRULY CLAIM FULL EXPERTISE IN THE BURGEONING LAW OF SEARCH AND SEIZURE.

2. PETITIONER WAS NOT DENIED DUE PROCESS OF LAW.

PETITIONER CONTENDS THAT HE WAS DENIED DUE PROCESS BY THE ALLEGED FAILURE OF THE COMMONWEALTH TO PRESENT ANY EVIDENCE OF UNLICENSED DEALERSHIP TO JUSTIFY THE FORFEITURE OF THE RIFLES, PISTOLS,AND AMMUNITION SEIZED FROM THE BASEMENT OF HIS HOME. WHILE THE FAILURE TO PRODUCE ANY EVIDENCE WHATEVER MAY CONSTITUTE A DUE PROCESS VIOLATION, (SEE THOMPSON V. LOUISVILLE, 362 U.S. 199, 80 S. CT. 624 (1960)), WHERE SOME EVIDENCE IS PRESENTED THE CLAIM IS ONE OF SUFFICIENCY OF THE EVIDENCE WHICH IS NOT A CONSTITUTIONAL MATTER AND ACCORDINGLY NOT COGNIZABLE ON CERTIORARI REVIEW. 28 U.S.C. §1257(c), 28 U.S.C.A. §1257(c)(1966). SEE ALSO ANDERSON V. MAGGIO, 555 F.2D 447, 452 (5TH CIR. 1977); TALAVERA V. WAINWRIGHT, 547 F.2D 1238 (5TH CIR. 1977). THE GRAVAMEN OF PETITIONER'S CLAIM IS THAT LACK OF EVIDENCE OF A TRANSACTION CONSTITUTES

"NO EVIDENCE" AND THAT THE CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE COMMONWEALTH PROVED NOTHING. THE COMMONWEALTH SUBMITS THAT ALTHOUGH THE EVIDENCE WAS CIRCUMSTANTIAL, IT WAS MORE THAN SUFFICIENT TO SUPPORT A FINDING THAT PETITIONER WAS AN UNLICENSED DEALER IN FIREARMS AND AMMUNITION IN VIOLATION OF BOTH THE FEDERAL GUN CONTROL ACT, 18 U.S.C. §921, ET SEQ., 18 U.S.C.A. §921 ET SEQ. (1976) AND THE PENNSYLVANIA CRIMES CODE, 18 C.P.S.A. §6112 (1973).[7]

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[7] THE PROOF PRESENTED WOULD ALSO ESTABLISH VIOLATIONS OF THE REGISTRY PROVISIONS OF THE NATIONAL FIREARMS ACT, 26 U.S.C. §5841 ET SEQ., 26 U.S.C.A. §5841 ET SEQ. (SUPP. 1978). BECAUSE THE PENNSYLVANIA SUPERIOR COURT ADDRESSED ONLY PROOF OF UNLICENSED DEALERSHIP UNDER THE GUN CONTROL ACT, HOWEVER, SUFFICIENCY UNDER THE GUN CONTROL ACT ONLY IS ADDRESSED HERE.

Moreover it has never been held that proof by circumstantial evidence constitutes a violation of due process. Further, unlicensed dealership may be established by circumstantial evidence alone. See United States v. Ransom, 545 F.2d 481 (5th Cir. 1977), cert. denied, ___ U.S. ___, 98 S. Ct. 310 (1977); United States v. Assortment of 12 Rifles and 21 Handguns, 313 F. Supp. 641 (M.D. Fla. 1970).

The record establishes the petitioner was not licensed as a dealer or collector in firearms, ammunition, or explosives under state or federal law at the time of the seizure. (N.T. 12, 14). Indeed petitioner does not contest this fact. The record also establishes that petitioner's basement was a virtual arsenal of weaponry, including inter alia, over 100 rifles, 19 pistols, over 370,000 rounds of ammunition, vast quantities of machine guns, automatic pistols, destructive devices or ~~detail~~ explosives including electric squibs, gunpowder, TNT, hand grenade fuses, a Chinese Communist Propelling Charge and a Grenade simulator, weapons parts, firecrackers, knives, swords and a machete. (See Inventory, Appendix "A", N.T. 8-9). Stipulated expert testimony revealed that this quantity of weaponry, as well as the manner in which it was stored, packed rather than displayed, demonstrated that petitioner was dealing in firearms, ammunition and explosives rather than merely collecting. The stipulated testimony established that a collector would not possess more than a thousand

ROUNDS OF ANY TYPE OF AMMUNITION. (N.T. 32). HERE, AMONG THE 370,000 ROUNDS OF AMMUNITION PETITIONER HAD 35 TYPES OF AMMUNITION IN QUANTITIES EXCEEDING 1000 ROUNDS, 5 TYPES OF AMMUNITION EXCEEDING 10,000 ROUNDS, AND 95,349 LIVE ROUNDS OF 7.5 MM FRENCH AMMUNITION. SEE INVENTORY, APPENDIX "A", 20-23. THE COURT COULD INFER FROM THE EVIDENCE THAT THE MANNER OF STORAGE OF THE ITEMS MAKING THEM INACCESSIBLE FOR USE OR SHOW YET APPROPRIATE FOR EXPORT SHIPMENT INDICATES A DEALER RATHER THAN A COLLECTOR.[8] WHILE PETITIONER CLAIMS THAT NO DEALING COULD OCCUR BECAUSE HE WAS OUT OF THE COUNTRY FOR TWO YEARS PRIOR TO THE SEIZURE, IT IS JUST AS LIKELY THAT IN VIEW OF THE PACKAGING, PETITIONER COULD, WHILE ABROAD, ARRANGE FOR SALE AND SHIPMENT OF THESE ITEMS WHICH WOULD BE AVAILABLE FOR OVERSEAS SHIPMENT WITH A PHONE CALL. FURTHERMORE, PETITIONER CANNOT, SIMPLY BY LIMITING HIS REQUEST TO THE RIFLES, PISTOLS, AND AMMUNITION, DISREGARD THE CRUCIAL FACT THAT THESE ITEMS WERE STORED AMONG PER SE CONTRABAND, ESPECIALLY VAST QUANTITIES OF EXPLOSIVES, WHICH COULD NOT POSSIBLY BE KEPT FOR PETITIONER'S "USE". IN VIEW OF THE DANGEROUSNESS OF THE EXPLOSIVES,

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[8] WHILE THERE WAS NO DIRECT TESTIMONY OF PACKING FOR SHIPMENT, PETITIONER IN HIS BRIEF IN THE SUPERIOR COURT OF PENNSYLVANIA, CONCEDED, AND INDEED CLAIMED, THAT THE FIREARMS WERE PACKED "IN EXPORT QUALITY PACKING FOR PROTECTION IN STORAGE AND IN PREPARATION FOR SHIPMENT OVERSEAS". BRIEF FOR APPELLANT, COMMONWEALTH V. FASSNACHT, OCTOBER TERM, NO. 705, SUPERIOR COURT OF PENNSYLVANIA, AT 25.

(N.T. 30-32), NO REASONABLE MAN WOULD POSSESS SUCH MATERIALS IN SUCH QUANTITIES UNLESS HE WERE DEALING IN THEM. HAD THE POLICE SEIZED RIFLES IN A DISPLAY CASE IN PETITIONER'S LIVING ROOM ALONG WITH EXPLOSIVES IN THE BASEMENT, THE COMMONWEALTH WOULD NOT SUGGEST THAT PETITIONER WAS DEALING IN THOSE RIFLES. HERE, HOWEVER, THE RIFLES, PISTOLS AND AMMUNITION WERE PACKED IN THE BASEMENT AMONG THE REMAINING ARSENAL OF WAR EQUIPMENT AND THE ONLY LOGICAL INFERENCE FROM THE COMMINGLED STORAGE IS THAT PETITIONER WAS DEALING IN THE RIFLES, PISTOLS,AND AMMUNITION AS WELL.

FINALLY, IN VIEW OF THE DUPLICATES IN THE COLLECTION, THE COURT COULD INFER THAT THE WEAPONRY FOUND REPRESENTED UNSOLD INVENTORY IN PETITIONER'S UNLICENSED DEALERSHIP.[9] FOR EXAMPLE, THE CACHE CONTAINED FOUR 9 MM GERMAN LUGERS, TWO 7.62 CALIBER RUSSIAN REVOLVERS, SIX 7 MM CALIBER MAUSER RIFLES, TWO 45-70 CALIBER SPRINGFIELD RIFLES, THREE 7.5 MM CALIBER FRENCH RIFLES,

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[9] PETITIONER CLAIMS THAT NO DUPLICATES EXISTED IN HIS COLLECTION AND THAT THE ONLY EVIDENCE OF DUPLICATION FIRST APPEARED IN THE COMMONWEALTH'S APPELLATE BRIEF IN THE SUPERIOR COURT OF PENNSYLVANIA. SINCE, HOWEVER, PETITIONER MADE NO OBJECTION TO THE INVENTORY PRODUCED AT THE HEARING (N.T. 30), AND INDEED STIPULATED TO IT (N.T. 8-9, 41) NOT ONLY IS THERE SUFFICIENT EVIDENCE OF DUPLICATION, BUT PETITIONER'S PRESENT CLAIM OF NO DUPLICATION IS NOT OF RECORD AND IS IN FACT REFUTED THEREBY.

FIVE 8 MM GERMAN RIFLES, FIVE 30 CALIBER U.S. CARBINES AND SIX 30 CALIBER MAUSER AUTOMATIC PISTOLS. THOUGH PETITIONER CLAIMS THAT THE INVENTORY PRESENTED AT TRIAL AND STIPULATED TO BY PETITIONER AT TRIAL (N.T. 8-9, 30, 41), INCORRECTLY LISTS AS DUPLICATES, WEAPONS WHICH PETITIONER "RECALLS" ARE ACTUALLY DIFFERENT, IF PETITIONER WISHED TO EXPLAIN OR EMBELLISH THE INVENTORY, HE HAD AMPLE OPPORTUNITY TO DO SO AT THE HEARING. INDEED FOR THIS COURT TO GRANT CERTIORARI BECAUSE THE PENNSYLVANIA SUPERIOR COURT INCORRECTLY CONSIDERED DUPLICATES COULD ONLY BE PREDICATED ON THIS COURT'S ASSUMING ORIGINAL JURISDICTION IN THIS MATTER.

IN VIEW OF THE EXTENSIVE EVIDENCE REGARDING THE TYPE AND QUANTITY OF WEAPONS, THE MANNER OF STORAGE, THE EXPERT OPINION THAT THESE FACTS ARE INDICATIVE OF A DEALER RATHER THAN A COLLECTOR, AMPLE EVIDENCE OF DEALERSHIP WAS PRESENTED AND NO DUE PROCESS VIOLATION OCCURRED.[10]

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[10] IN HIS ARGUMENT PETITIONER CONFUSES A JUSTIFIABLE INFERENCE FROM THE EVIDENCE WITH A STATUTORY PRESUMPTION. SEE PETITION AT 48 CITING THOMPSON V. LOUISVILLE, SUPRA; TOT V. UNITED STATES, 319 U.S. 463, 63 S. CT. 1241 (1943); AND TURNER V. UNITED STATES, 396 U.S. 398, 90 S. CT. 642, (1970). HERE THERE IS NO PRESUMPTION, MERELY A JUSTIFIABLE INFERENCE FROM CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE MAY BE USED TO ESTABLISH UNLICENSED DEALERSHIP. UNITED STATES V. RANSOM, SUPRA; UNITED STATES V. ASSORTMENT OF 12 RIFLES AND 21 HANDGUNS, SUPRA.

PETITIONER ALSO ARGUES THAT HE WAS DENIED DUE PROCESS BY REASON OF THE STIPULATION METHOD OF EVIDENCE PRESENTATION AT THE HEARING, WHERE THE STIPULATIONS WERE, IN PART, CONTRADICTORY. HOWEVER, SINCE THIS CLAIM WAS NEVER RAISED IN THE STATE COURTS, AND INDEED COUNSEL FOR PETITIONER PARTICIPATED IN THIS PROCEDURE AT THE HEARING, PETITIONER CANNOT NOW BE HEARD TO COMPLAIN. MONKS V. NEW JERSEY, SUPRA; STREET V. NEW YORK, SUPRA; PICKERING V. BOARD OF EDUCATION, SUPRA.

EVEN IF THIS ISSUE HAD BEEN PRESENTED TO THE STATE COURTS, IT WOULD NOT MERIT REVIEW HERE. THE STIPULATIONS ENTERED IN THIS CASE, WERE NOT STIPULATIONS AS TO FACTS, BUT RATHER WERE STIPULATIONS AS TO WHAT AN INDIVIDUAL WOULD SAY IF HE OR SHE WERE CALLED AS A WITNESS. THUS THE FACTFINDER COULD STILL MAKE INFERENCES FROM THE STIPULATIONS. MOREOVER, THE STIPULATIONS, WHILE CONFLICTING, WERE NOT DIRECTLY CONTRADICTORY. PETITIONER'S EVIDENCE WAS, IN ESSENCE, THAT HE "NEVER ENGAGED IN TRANSACTIONS, WHOLESALE OR RETAIL WITH THESE ITEMS." (N.T. 46). THE COMMONWEALTH WOULD AGREE THAT SINCE HE STILL POSSESSED THESE ITEMS ON THE DATE OF THE SEIZURE, HE PROBABLY HAD NOT ACTUALLY CONSUMMATED ANY TRANSACTION WITH RESPECT TO THESE PARTICULAR ITEMS AT THAT PARTICULAR TIME. BUT THESE ITEMS PROVIDED SUFFICIENT BASIS TO INFER DEALERSHIP IN ARMS WITH RESPECT TO OTHER ITEMS WHICH COULD HAVE ALREADY BEEN SOLD, OR WITH RESPECT TO THESE ITEMS

AT SOME FUTURE TIME. ACCORDINGLY, THESE ITEMS REPRESENTED UNSOLD INVENTORY IN PETITIONER'S UNLICENSED DEALERSHIP AND THUS WERE CONTRABAND.

3. DEALERSHIP UNDER THE FEDERAL GUN CONTROL ACT WAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE.

PETITIONER IN HIS FINAL CONTENTION ARGUES THAT THE STATE COURT ERRED IN DETERMINING THE AMOUNT OF EVIDENCE REQUIRED TO PROVE UNLICENSED DEALERSHIP UNDER THE FEDERAL GUN CONTROL ACT, 18 U.S.C. §922(A)(1), 18 U.S.C.A. §922 (A)(1)(1976). HOWEVER, IN SUPPORT OF HIS ARGUMENT THAT THE QUANTUM OF PROOF REQUIRED IS GREATER THAN THAT FOUND TO BE SUFFICIENT BY THE SUPERIOR COURT, PETITIONER REFERS TO CRIMINAL CASES ONLY. SINCE THIS IS A FORFEITURE PROCEEDING, THE "BEYOND A REASONABLE DOUBT" STANDARD APPLICABLE IN CRIMINAL CASES DOES NOT APPLY. RATHER:

> THIS ACTION, BEING ONE CIVIL IN NATURE, IS GOVERNED BY A STANDARD ALTOGETHER DIFFERENT FROM THAT GOVERNING A CRIMINAL PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTIONS 923 AND 924(A). SEE UNITED STATES V. BURCH, 294 F.2D 1 (5TH CIR. 1961). THUS, THE MEASURE OF PROOF TO SUSTAIN THE POSITION OF THE GOVERNMENT IN THIS TYPE CASE IS BY A PREPONDERANCE OF THE EVIDENCE. SEE UNITED STATES V. UNITED STATES CURRENCY, 264 F. SUPP. 394 (M.D.PA. 1966).

United States v. Assortment of 12 Rifles and 21 Handguns, supra, at 642. See also Glup v. United States, 523 F.2d 557, 561 (8th Cir. 1975) quoting One Lot Emerald Cut Stones v. United States, 409 U.S. 232, 235, 93 S. Ct. 489, 492 (1972); One 1961 Lincoln Continental Sedan v. United States, supra. The evidence here, specifically the enormous quantity of items amounting to an arsenal of weaponry, the manner in which they were kept, specifically cleaned, oiled and packed, the nature of all the items, including duplicates and various types of explosives and ammunition, and the virtual impossibility that they could all be used by one person for personal use proved dealership by a preponderance of the evidence. Further, no case has required evidence of a transaction to prove dealership. Even if several isolated single weapon sales would not be sufficient to establish dealership even under a reasonable doubt standard, an enormous cache of stored weapons, explosives and ammunition is enough to prove dealership by a preponderance of the evidence.

Finally, it should be noted that the forfeiture in this case is supportable under various theories including violations of state dealership statutes. Should this Court consider that the evidence, even under a preponderance standard, was insufficient to prove dealership under the Federal Gun Control Act, it would nevertheless be sufficient to support unlicensed dealership by a preponderance of the evidence under state statutes. 18 C.P.S.A. §6112; and for this reason as well review by this Court should not be granted.

CONCLUSION

FOR THE FOREGOING REASONS, RESPONDENT, THE COMMONWEALTH OF PENNSYLVANIA, RESPECTFULLY REQUESTS THAT THE COURT NOT ISSUE A WRIT OF CERTIORARI TO REVIEW THE DECISION BELOW.

RESPECTFULLY SUBMITTED,

JANE CUTLER GREENSPAN
ASSISTANT DISTRICT ATTORNEY

STEVEN H. GOLDBLATT
DEPUTY DISTRICT ATTORNEY FOR LAW

EDWARD G. RENDELL
DISTRICT ATTORNEY

2400 CENTRE SQUARE WEST
PHILADELPHIA, PENNSYLVANIA 19102

APPENDIX A

The following is an inventory of items seized from the premises of George E. Fassnacht, located at 528 Rhawn Street.

Category 1 - automatic weapons, machine guns and automatic pistols:

1 Star Automatic Pistol, 9mm caliber,
Serial No. 560108

1 Astra Automatic Pistol, 9mm caliber,
Serial No. 36406

1 Browning Automatic Pistol, 9 mm caliber,
Serial No. 74521

1 Star Automatic Pistol, 9 mm caliber,
Serial No. B487753

1 Star Automatic Pistol, 380 caliber,
Serial No. S438480

1 Star Automatic Pistol, 45 caliber,
Serial No. P331882

1 Mauser Automatic Pistol, 32 caliber auto,
Serial No. 960638

1 Walther Automatic Pistol, 32 caliber,
Serial No. 54224

1 Hungarian Automatic Pistol, 9mm caliber,
Serial No. EO9768

1 Swedish Automatic Pistol, 9 mm caliber,
Serial No. D14960

1 Czech. Automatic Pistol, 9mm caliber,
Serial No. D07421

1 Spanish Automatic Pistol, 32 caliber,
Serial No. A5597

1 Colt Automatic Pistol, 22 caliber,
Serial No. 154352

1 Styer Automatic Pistol, 9mm caliber,
Serial No. 6248V

1 Polish Automatic Pistol, 9mm caliber,
Serial No. N9722

1 Czech. Automatic Pistol, 9mm caliber,
Serial No. 283922

1 Browning Automatic Pistol, 380 caliber,
Serial No. 49006

1 German Automatic Pistol, 32 caliber,
Serial No. 507209

1 German Automatic Pistol, 32 caliber,
Serial No. 121312

1 Astra Automatic Pistol, 380 caliber,
Serial No. 729446

1 Sauer Automatic Pistol, 32 caliber,
Serial No. 472607

1 Browning Automatic Pistol, 9mm caliber,
Serial No. 127233

1 Mauser Automatic Pistol, 32 caliber,
Serial No. 130673

1 Colt Automatic Pistol, 45 caliber,
Serial No. 40005-LW

1 Manlicher Automatic Pistol, 8mm caliber,
Serial No. 2940

1 Star Automatic Pistol, 380 caliber,
Serial No. S442280

1 Walther Automatic Pistol, 32 caliber,
Serial No. 518434

1 Astra Automatic Pistol, 9mm caliber,
Serial No. 81552

1 Astra Automatic Pistol, 9mm caliber,
Serial No. 81510

1 French Automatic Pistol, 9mm caliber,
Serial No. 555082

1 Colt Automatic Pistol, 22 caliber,
Serial No. 138537S

1 French Automatic Pistol, 7.65 caliber,
Serial No. 87138A

1 Bergman-Bayard Automatic Pistol, 9mm caliber,
Serial No. 5473 (631)

1 Astra Automatic Pistol, 9mm caliber,
Serial No. 6703

1 Colt Automatic Pistol, 380 caliber,
Serial No. 135259

1 Argentine Automatic Pistol, 45 caliber,
Serial No. B5181

1 Japanese Automatic Pistol, 8mm caliber,
Serial No. 16842

1 United States Automatic Pistol, 45 caliber,
Serial No. 1008772

1 Browning Automatic Pistol, 380 caliber,
Serial No. 55729

1 Hungarian Automatic Pistol, 32 caliber,
Serial No. 63020

1 Belgian Automatic Pistol, 32 caliber,
Serial No. 549141

1 Walther Automatic Pistol, 32 caliber,
Serial No. 993193

1 Russian Automatic Pistol, 7.62mm caliber,
Serial No. YN155

1 Astra Automatic Pistol, 32 caliber,
Serial No. 7813

1 Browning Automatic Pistol, 32 caliber,
Serial No. 31600

1 Spanish Automatic Pistol, 32 caliber,
Serial No. 101346

1 Spanish Automatic Pistol, 32 caliber,
Serial No. 5289

1 Argentine Automatic Pistol, 45 caliber,
Serial No. 43409

1 Astra Automatic Pistol, 30 caliber,
Serial No. 12726

1 Mauser Automatic Pistol, 30 caliber,
Serial No. 22001

Category 2 - pistols with shoulder stocks:

1 Mauser Automatic Pistol, 30 caliber,
Serial No. 34311

1 Mauser Automatic Pistol, 30 caliber,
Serial No. 20440

1 Mauser Automatic Pistol, 30 caliber,
Serial No. 851560

1 German Luger, 9mm caliber,
Serial No. 8170

1 Mauser Automatic Pistol, 30 caliber,
Serial No. 425135

1 Mauser Automatic Pistol, 30 caliber,
Serial No. 376513

Category 3 - silencer for pistol:

1 silencer for 22 caliber pistol

Category 4 - pistols:

1 U.S. Military Revolver, 38 Special caliber,
Serial No. V675741

1 Harrington and Richardson Revolver, 22 caliber,
Serial No. 84456

1 Japanese Military Pistol, 8mm caliber,
Serial No. 49815

1 Japanese Tower Pistol, 50 caliber,
No Serial No. listed

1 German Luger, 9mm caliber,
Serial No. 108

1 French Revolver, 8mm caliber,
Serial No. F15107

1 Smith and Wesson Revolver, 38 Special caliber,
Serial No. 20082

1 Spanish Revolver, 25 caliber,
Serial No. 20630

1 German Luger, 9mm caliber,
Serial No. 6456

1 German Luger, 9mm caliber,
Serial No. 4434

1 Sedgley Revolver, 22 caliber,
No Serial No. listed

1 Japanese Tower Pistol, 50 caliber,
No Serial No. listed

1 British Revolver, 455 caliber,
Serial No. 321619

1 Russian Revolver, 7.62 caliber,
Serial No. 27290

1 Russian Revolver, 7.62 caliber,
Serial No. 39319

1 Colt Revolver, 45 caliber,
Serial No. 806236

1 Smith and Wesson Revolver, 38 Special caliber,
Serial No. V507917

1 Swiss Revolver, 7mm caliber,
Serial No. 12455

1 Japanese Revolver, 7mm caliber,
Serial No. 21591

Category 5 - destructive devices or explosives (plastic explosives, electric squibs, gun powder, TNT, hand grenade fuses, a Chinese Communist propelling charge, and a grenade simulator):

1 Flare Pistol, Serial No. 25484

1 Flare Pistol, Serial No. Omitted

1 MBA Gyrojet Pistol, Serial No. B074

The following lots are included under this classification:

Lot No. 29

a) Two metal cases containing 54 blocks (2 and 1/2 pounds each) of C-4 military plastic explosives;

b) One case of electric squibs dated May 19, 1954;

c) Eleven cans of black powder;

d) Two Chinese Communist stick grenades (inert);

e) Two German rockets, RBG 2 & 7 (inert);

f) Three one-half pound blocks of TNT;

g) One pound block of TNT in black case (simulated trigger device).

Note: All items in Lot 29 taken by Army Ordinance.

Lot No. 30

a) One cardboard carton of thirty fuses for hand grenades, spoom type, M-206 A1.

Lot No. 35

a) One wooden box containing fourteen pounds of black powder in cans;

b) One wooden case of thirty green star parachute flares, M19A1;

c) One training grenade.

Note: All items in Lot 35 taken by Army Ordinance.

Lot No. 37

a) One gray canister for smoke pot;

b) One blasting machine.

Note: All items in Lot 37 taken by Army Ordinance.

Lot No. 42

a) Chinese Communist anti-tank grenades, hand thrown, bottoms;

b) One Chinese Communist grenade (inert);

c) One Chinese Communist rocket motor, PG 7;

d) One Warhead (inert);

e) One H.E. anti-tank and eleven anti-tank with propellant handles (inert).

Note: All items in Lot 42 taken by Army Ordinance.

Lot No. 45

a) Two cardboard boxes containing grenade launchers and empty magazines.

Lot No. 46

a) One cardboard box containing grenade launchers.

Lot No. 48

a) Two boxes of fuse lighters (M-2);

b) Three booby-trap simulators;

c) Two M119 booby-trap sinulators;

d) One M116 grenade simulator;

e) Six smoke grenades (M-18), Lot No. PB-5458-10;

f) Three M-23A1 rifle smoke grenades, Lot No. OAP-12-30;

g) Six MK2 MOD1 parachute smoke grenade signals, Lot No. AP 100 9A52;

h) One rifle grenade, M-9A1 AT 6-51.

Note: All items in Lot 48 taken by Army Ordinance.

Category 6 - rifles:

1 Remington Rifle with Scope, 300 caliber,
Serial No. 292486

1 Mauser Rifle, 9X57 caliber,
Serial No. 116571

1 U.S. Carbine, 30 caliber,
Serial No. 3658992

1 Argentine Rifle, 8mm caliber,
Serial No. E1224

1 Czech. Rifle, caliber unknown,
Serial No. 37418

1 U.S. Military Rifle with Scope, 30 caliber,
Serial No. 5791076

1 German Rifle, 7mm caliber,
Serial No. 364

1 Japanese Rifle, 7.7 caliber,
Serial No. 1827529

1 Mossberg Rifle, 22 caliber,
No Serial No.

1 Japanese Tower Rifle, 50 caliber,
No Serial No.

1 Italian Shotgun, 410 gauge,
Serial No. 1565

1 Italian Rifle, 7.5 caliber,
Serial No. NC2376

1 Italian Rifle, 6.5 caliber,
Serial No. 98633

1 Columbian Rifle, 30 caliber,
Serial No. 52358

1 Springfield Rifle, 45-70 caliber,
Serial No. 533940

1 Springfield Rifle, 45-70 caliber,
Serial No. ???346

1 Mauser Rifle, 7mm caliber,
Serial No. H16

1 Mauser Rifle, 7mm caliber,
Serial No. C2438

1 U.S. Carbine, 30 caliber,
Serial No. 2976388

1 Mauser Rifle, 7mm caliber,
Serial No. RF00518

1 Russian Rifle, 7mm caliber,
Serial No. 0R4310

1 Swedish Rifle, 9mm caliber,
Serial No. 126892

1 French Rifle, 8mm caliber,
Serial No. H86904

1 Mauser Rifle, 8mm caliber,
Serial No. 1799

1 Spanish Rifle, 38 caliber ACP,
Serial No. 43932

1 Mauser Rifle, 7mm caliber,
Serial No. 116032

1 U.S. Carbine, 30 caliber,
Serial No. 5510584

1 Winchester Rifle, 45-70 caliber,
Serial No. 19010

1 U.S. Carbine, 30 caliber,
Serial No. 734107

1 U.S. Carbine, 30 caliber,
Serial No. F22211

1 French Rifle, 8mm caliber,
Serial No. R10603

1 Mauser Rifle, caliber unknown,
Serial No. 5273

1 German Rifle, 8mm caliber,
Serial No. 1086D

1 Mauser Rifle, 7mm caliber,
Serial No. C2491

1 U.S. Military Rifle, 30 caliber,
Serial No. 2678259

1 Enfield Rifle, 30 caliber,
Serial No. 131923

1 Italian Rifle, 7.5 caliber,
Serial No. 7208

1 Italian Rifle, 8mm caliber,
Serial No. 110441

1 German Rifle, 8mm caliber,
Serial No. 900

1 Belgian Mauser Rifle, 8mm caliber,
Serial No. 11325

1 German Rifle, 8mm caliber,
Serial No. 997

1 French Rifle, 7.5 caliber,
Serial No. F8308

1 German Rifle, 8mm caliber,
Serial No. 945

1 Portugese Rifle, 8mm caliber,
Serial No. D829

1 Mannlicher Rifle, 8mm caliber,
Serial No. 1157

1 Spanish Rifle, 8mm caliber,
Serial No. K648

1 U.S. Carbine, 30 caliber,
Serial No. 6429684

1 Mauser Rifle, 8mm caliber,
Serial No. 9323

1 Spandau Rifle, 10.5mm caliber,
Serial No. 9063

1 French Rifle, 7.5mm caliber,
Serial No. 98597

1 Spanish Rifle, 9mm caliber,
Serial No. 44351

1 Mauser Rifle, 7.9mm caliber,
Serial No. unknown

1 French Rifle, 10mm caliber,
Serial No. 751

1 Russian Rifle, 7.62mm caliber,
Serial No. 60U9115

1 Belgian Mauser Rifle, 7mm caliber,
Serial No. 39187

1 Russian Rifle, 7.62 caliber,
Serial No. 1000

1 French Rifle, 7.5mm caliber,
Serial No. F23989

1 Spanish Rifle, 7.62mm caliber,
Serial No. S02352

1 Egyptian Rifle, 7mm caliber,
Serial No. 1942-2064

1 German Rifle, 7.62mm caliber,
Serial No. NB712

1 Belgian Rifle, 7.62mm caliber,
Serial No. 6275

1 Belgian Rifle, 308 caliber,
Serial No. 2007

1 Iranian Rifle, 8mm caliber,
No Serial No.

1 German Rifle, 8mm caliber,
Serial No. 7077

1 Mannlicher Rifle, 8mm caliber,
Serial No. RA30717

1 Mauser Rifle, 22 caliber,
Serial No. 141497

1 Japanese Rifle, 7.7mm caliber,
Serial No. 98291

1 Belgian Rifle, 7.62 caliber,
Serial No. 1456

1 Iranian Rifle, 7.9mm caliber,
Serial No. not listed

1 Mauser Rifle, 7.9mm caliber,
Serial No. 011688

1 Mauser Rifle, 8mm caliber,
Serial No. 88

1 Mauser Rifle, 8mm caliber,
No Serial No. listed

1 French Rifle, 8mm caliber
Serial No. 65015

1 Colt Rifle, 223 caliber,
Serial No. SP01072

1 German Rifle, 7.9mm caliber,
Serial No. 2467

1 Swedish Rifle, 8mm caliber,
Serial No. 63428

1 U.S. Military Rifle, 30 caliber,
Serial No. 3541234

1 Belgian Rifle, 8mm caliber,
Serial No. 4599

1 German Rifle, 8mm caliber,
Serial No. 3472

1 Remington Rifle, 30 caliber,
Serial No. 87654

1 Austrian Rifle, 7mm caliber,
Serial No. 4429

1 Czech. Rifle, 8mm caliber,
Serial No. 0402

1 Winchester Rifle, 45-75 caliber,
Serial No. 8222

1 Springfield Rifle, 22 caliber,
Serial No. 11142

1 Winchester Rifle, 30-30 caliber,
Serial No. 1928571

1 Marlin Rifle, 30-30 caliber,
Serial No. G32214

1 Johnson Rifle, 30-06 caliber,
Serial No. B5094

1 Fox Shotgun, 12 gauge caliber,
Serial No. not listed

1 German Rifle, 7.65mm caliber,
Serial No. 6615

1 Russian Rifle, 8mm caliber,
Serial No. AA756

1 Mauser Rifle, 7mm caliber,
Serial No. 4335

1 Italian Rifle, 11mm caliber,
Serial No. V3591

1 Spanish Rifle, 7mm caliber,
Serial No. N9459

1 Japanese Rifle, 7mm caliber,
Serial No. 93247

1 Enfield Rifle, 30mm caliber,
Serial No. 25599

1 Springfield Rifle, 30 caliber,
Serial No. 469203

1 Springfield Rifle, 30 caliber,
Serial No. 3547446

1 French Rifle, 8mm caliber,
Serial No. 8147

1 Winchester Shotgun, 12 gauge,
Serial No. 940906

Lot. No. 5

a) One box of 30 caliber ball ammunition, Class C.

Lot No. 6

a) Four cases of small arms ammunition.

Lot No. 8

a) Four cases of assorted small arms ammunition.

Lot No. 10

a) Two boxes of 45 caliber blank ammunition, 1000 rounds each, blank M-9, Lot RA5000.

Lot No. 13

a) One metal case of 7.5mm ammunition from Soviet Bloc countries.

Lot No. 14

a) Seven boxes of assorted ammunition and gun patches, including one box of 30 caliber, Lot SL-L-37705.

Lot No. 15

a) Two crates of 7.5mm ammunition;

b) Thirty caliber tracers;

c) Eight mm Mauser ammunition, Lot KOP 98-32.

Lot No. 16

a) One gray case containing assorted small arms ammunition.

Lot No. 17

a) Four wood cases of 45 caliber blank ammunition, Lot RA5000

Lot No. 18

a) Two wood cases containing AK-47 ammunition, caliber 7.62mm.

Lot No. 19

a) Two wood crates containing 7.5mm ammunition with New York Inc. marked on side.

Lot. No. 5

a) One box of 30 caliber ball ammunition, Class C.

Lot No. 6

a) Four cases of small arms ammunition.

Lot No. 8

a) Four cases of assorted small arms ammunition.

Lot No. 10

a) Two boxes of 45 caliber blank ammunition, 1000 rounds each, blank M-9, Lot RA5000.

Lot No. 13

a) One metal case of 7.5mm ammunition from Soviet Bloc countries.

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a) Seven boxes of assorted ammunition and gun patches, including one box of 30 caliber, Lot SL-L-37705.

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a) Two crates of 7.5mm ammunition;

b) Thirty caliber tracers;

c) Eight mm Mauser ammunition, Lot KOP 98-32.

Lot No. 16

a) One gray case containing assorted small arms ammunition.

Lot No. 17

a) Four wood cases of 45 caliber blank ammunition, Lot RA5000

Lot No. 18

a) Two wood cases containing AK-47 ammunition, caliber 7.62mm.

Lot No. 19

a) Two wood crates containing 7.5mm ammunition with New York Inc. marked on side.

Lot No. 20

a) A cardboard box containing assorted 12 gauge and 14 gauge shotgun shells and revolver ammunition, mostly commercial.

Lot No. 21

a) Two green ammunition cases of 7mm ammunition;

b) Two green ammunition cases of 9mm pistol ammunition;

c) One green case of 30 caliber armor-piercing rifle ammunition (Lot No. S137246).

Lot No. 22

a) One wood crate of 9mm pistol ammunition.

Lot No. 23

a) One ammunition case and two cigar boxes of assorted ammunition.

Lot No. 24

a) One wood case of 9mm pistol ammunition, German make;

b) One crate of 9mm rifle and 45 caliber pistol ammunition made in Germany (Interarmco printed on cases).

Lot No. 25

a) Twenty green cases containing small arms ammunition and blanks.

Lot No. 26

a) Two black metal containers in a wooden case. One container held 7.9mm ball type rifle ammunition. On the side of one container was marked CAT-LO-VOV No. 2721-65, Capt. Dowell (6782), Dec. 4, 1944.

Lot. No. 27

a) Six wood crates of 7.5mm rifle ammunition marked E.F.S. Inc., New York.

Lot No. 28

a) Three wood crates of 30 caliber armor-piercing ammunition (Lot No. 10A-52)

Lot No. 31

a) Two wood crates of 9mm German make pistol ammunition.

Lot No. 32

a) Three green boxes of 45 caliber ammunition and 7.9mm rifle ammunition;

b) Three small boxes of 6.62mm rifle ammunition;

c) Seven Communist Eley 12 gauge shotgun shells.

Lot No. 33

a) One metal box of 7.62mm Chinese ammunition;

b) Three wood crates of small arms ammunition and parts.

Lot No. 34

a) Thirty-eight green ammunition cans containing small arms ammunition;

b) Three wood cases of small arms ammunition;

c) One cartridge casing (no bullet).

Lot No. 36

a) Forty wood crates of small arms ammunition (7.5mm caliber) marked E.F.S. Inc., New York.

Lot No. 38

a) Two wooden crates of shotgun shells (1 marked Ceramics, 1 marked Dinnerware).

Lot No. 39

a) Four wood crates of 7.63mm ammunition;

b) One wood crate of 9mm Mauser ammunition;

c) Twelve green metal boxes of assorted small caliber ammunition.

Lot No. 40

a) Three 155mm H.E. Howitzer shells, M-107, shells marked as follows: 1-R2BDA, 2-R2BAA, 3-R2BLA.

Lot No. 41

a) Four wood crates of assorted shotgun and small arms ammunition;

b) One cardboard box of assorted small arms ammunition;

c) One crate of blanks.

Lot No. 42

a) Six large metal cases of small arms ammunition;

b) Sixteen small metal cases of small arms ammunition;

c) Twelve wooden cases of small arms ammunition;

d) Five cardboard boxes of small arms ammunition.

Lot No. 43

a) Two wooden cases of small arms ammunition.

Lot No. 45

a) Seventeen wooden cases of small arms ammunition;

b) Six metal cases of small arms ammunition;

c) One suitcase (initialed D.E.F.) containing blanks.

Lot No. 46

a) Eight metal boxes of small arms ammunition;

b) Ten wooden boxes of small arms ammunition;

c) One 155mm Howitzer shell (inert).

Lot No. 47

a) Twenty wooden cases of small arms ammunition and magazines.

Lot No. 48

a) Two 37mm shells;

b) One 40mm shell.

Lot No. 49

a) One wooden box of small arms ammunition;

b) One mortar carriage.

Category 9 - pyrotechnics and fireworks:

Lot No. 2

a) One box of assorted firecrackers.

Lot No. 7

a) One metal container holding one M-22-A2 smoke grenade, OPA*7-12;

b) Forty-nine 37mm aerial flares.

Lot No. 25

a) Foreign and domestic color flares.

Lot No. 46

a) One metal box containing pyrotechnics.

Category 10 - weapon parts (including parts for machine guns and automatic pistols, as well as parts for regular rifles and pistols):

Item 44

a) One Carbine barrel and action.

Item 193

a) A Colt conversion kit for 45 automatic pistol.

Lot No. 33

a) One cardboard box of small arms stocks;

b) Parts of three wooden crates containing small arm parts.

Lot No. 43

a) One cardboard box of assorted rifle parts.

Lot No. 45

a) One cardboard box of pistol holsters;

b) Empty magazines. These were included in crates containing other items.

Lot No. 46

a) One wooden rifle stock.

Lot No. 47

a) One cardboard box of rifle parts;

b) One metal box of gun parts.

Lot No. 49

a) Eight wooden boxes of rifle parts and magazines.

Category 11 - ammunition clips and magazines for both regular and automatic weapons:

Lot No. 28

a) Six wood crates of 30 caliber ammunition in 10-round clips (Lot No. LC-13435).

Lot No. 32

a) Six small boxes of clips of 6.5mm ammunition.

Lot No. 45

a) Included in two cardboard boxes - various empty magazines.

Lot No. 46

a) One metal magazine;

b) One metal gun carriage.

Lot No. 47

a) One metal box of magazines.

RECAPITULATION OF AMMUNITION BY CALIBER

.22 caliber blanks	118
.22 caliber BB caps	144
.22 caliber short rifle	463
.22 caliber long rifle	8,706
.22 caliber Hornet	100
.220 caliber	80
.223 caliber	990
.25 automatic	974
.25/35 caliber	40
.257 caliber	20
.300 Savage	588
.30/06 caliber	5,839
.303 British	10,159
.30 caliber	14,050
.30 Luger	7,490
.30 Mauser	5,421
.32 revolver (Italian)	20
.32 automatic	1,425
.32/20 caliber	94
.380 caliber	1,689
.38 S & W (short)	134
.38 S & W (long)	50
.38 caliber special	6,948
.38 automatic	2,272

5.56mm	664
6.35 Carcano	899
6.5 Japanise	200
6.5 Dutch	362
6.5 Carcano	294
6.65 Japanise	260
7mm French	11,608
7mm Mauser	6,840
7.5mm Lebel	200
7.5mm French	95,349
7.5mm Nagant	450
7.57mm Mauser Rifle	140
7.62mm Russian Rifle	9,944
7.62mm Russian Pistol	2,025
7.62mm FN Pistol	450
7.62mm NATO Rifle	6,005
7.62mm Chinese Communist Rifle	1,152
7.62mm Kurz	3,543
7.62 Czech	1,990
7.62mm French	360
7.62X39 Russian	139
7.62X52 Czech	1,200
7.63mm Mauser Pistol	6,285
7.65mm Russian Rifle	726
7.65mm French Pistol	5,363
7.65mm Belgium Rifle	2,010

7.7mm Japanise	320
7.92mm Kurz	109
7.92mm Mauser	190
8X57 Mauser	55
8mm Mauser Pistol	4,310
8mm Lebel	93
8mm Kurz	580
8mm Mauser Rifle	30,412
8mm French Pistol	843
9mm Styer	5,840
9mm Star	8,025
9mm Parabelum	6,000
9mm Luger	34,848
9mm Largo	12,242
9mm Italian	1,079
9mm Mauser	1,987
9mm Bergman	3,445
9.3X62 Rifle Ammunition	1,154
.43 caliber Mauser Pistol	105
.45 caliber automatic	6,764
.45 caliber blanks	17,078
.45 caliber Colt	1,512
.45/70 ammunition	900
.45/75 ammunition	29
.50 caliber maching gun links	1,400
.445 Russian	90
.455 British	150

10.75mm Mauser	899
11mm Black Powder	199
20mm Cannon	1
Gyro Jets	30
12 gauge shotgun	3,058
.410 shotgun shells	268
.43 caliber Spanish Rifle	39
TOTAL	370,326 Live Rounds

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE E. FASSNACHT, PETITIONER	:	OCTOBER TERM, 1978
V.	:	
COMMONWEALTH OF PENNSYLVANIA, RESPONDENT	:	NO. 78-191

CERTIFICATION OF SERVICE

I, JANE CUTLER GREENSPAN, ESQUIRE, COUNSEL FOR RESPONDENT, COMMONWEALTH OF PENNSYLVANIA, HEREBY CERTIFY THAT I HAVE CAUSED A COPY OF THIS BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA TO BE SERVED UPON GREGORY M. HARVEY, ESQUIRE, COUNSEL FOR PETITIONER, GEORGE E. FASSNACHT, BY DEPOSITING FIVE COPIES IN THE UNITED STATES MAIL, FIRST CLASS, POSTAGE PREPAID, ADDRESSED TO GREGORY M. HARVEY, ESQUIRE, 2200 THE FIDELITY BUILDING, 123 SOUTH BROAD STREET, PHILADELPHIA, PENNSYLVANIA, 19109, ON SEPTEMBER 22, 1978.

JANE CUTLER GREENSPAN